

1 KEKER & VAN NEST LLP  
2 ROBERT A. VAN NEST - # 84065  
rvannest@kvn.com  
3 CHRISTA M. ANDERSON - # 184325  
canderson@kvn.com  
4 DANIEL PURCELL - # 191424  
dpurcell@kvn.com  
5 633 Battery Street  
San Francisco, CA 94111-1809  
6 Telephone: 415 391 5400  
Facsimile: 415 397 7188

KING & SPALDING LLP  
DONALD F. ZIMMER, JR. - #112279  
fzimmer@kslaw.com  
CHERYL A. SABNIS - #224323  
csabnis@kslaw.com  
101 Second Street, Suite 2300  
San Francisco, CA 94105  
Tel: 415.318.1200  
Fax: 415.318.1300

7 KING & SPALDING LLP  
8 SCOTT T. WEINGAERTNER  
(Pro Hac Vice)  
sweingaertner@kslaw.com  
9 ROBERT F. PERRY  
rperry@kslaw.com  
10 BRUCE W. BABER (Pro Hac Vice)  
11 1185 Avenue of the Americas  
New York, NY 10036  
12 Tel: 212.556.2100  
Fax: 212.556.2222

IAN C. BALLON - #141819  
ballon@gtlaw.com  
HEATHER MEEKER - #172148  
meekerh@gtlaw.com  
GREENBERG TRAURIG, LLP  
1900 University Avenue  
East Palo Alto, CA 94303  
Tel: 650.328.8500  
Fax: 650.328.8508

13 Attorneys for Defendant  
14 GOOGLE INC.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 ORACLE AMERICA, INC.,  
19 Plaintiff,  
20 v.  
21 GOOGLE INC.,  
22 Defendant.

Case No. 3:10-cv-03561 WHA

**GOOGLE'S SECOND MOTION FOR  
JUDGMENT AS A MATTER OF LAW ON  
SECTIONS OF COUNT VIII OF  
ORACLE'S AMENDED COMPLAINT**

Dept.: Courtroom 8, 19<sup>th</sup> Floor  
Judge: Hon. William Alsup

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 50, Google hereby moves for Judgment as a Matter of Law on sections of Count VIII of Oracle's Amended Complaint. Pursuant to the Court's request, Google will file supplemental briefing in support of its motion on Tuesday, May 1.

## II. ARGUMENT

*First*, Google is entitled to judgment as a matter of law that the source code and object code implementing the 37 API packages are not derivative works of Oracle's specifications. As explained in Google's April 25, 2012 Motion for Judgment as a Matter of Law [Dkt. No. 984] ("Apr. 25 JMOL") at 2-3, Oracle's derivative work claim is foreclosed by 17 U.S.C. § 102(b) and *Baker v. Selden*, 101 U.S. 99 (1879).

*Second*, Google is entitled to judgment as a matter of law that the method signatures are not protected by copyright under both section 102(b) and the short words and phrases doctrine. *See* Apr. 25 JMOL at 3-4; *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1524 n.7 (9th Cir. 1992).

*Third*, Google is entitled to judgment as a matter of law that the alleged literal copying is *de minimis* and thus non-actionable. *See* Apr. 25 JMOL at 4-6.

*Fourth*, Google is entitled to judgment as a matter of law that its specifications for the 37 API packages do not infringe Oracle's specifications. *See* Apr. 25 JMOL at 6-10.

*Fifth*, Google is entitled to judgment as a matter of law on Oracle's claims based on "direct code copying" relating to the rangeCheck code, the eight "Impl/ACL" test files and the allegedly copied comments, as a result of Oracle's failure to prove that either of the two copyright registrations on which Oracle relies provides protection for or covers the individual files on which those claims are based.

*Sixth*, Google is entitled to judgment as a matter of law on Oracle's copyright claim as a result of Oracle's failure to prove the contents of the works that are the subject of the two copyright registrations on which Oracle relies. *See* Apr. 25 JMOL at 10-11.

*Seventh*, to the extent Oracle has not already withdrawn with prejudice its "collective

work” argument, Google is entitled to judgment as a matter of law of non-infringement as to all constituent elements of the registered works, because Oracle has failed to prove authorship of any component parts of the works. *See* Apr. 25 JMOL at 11-12.

Google’s Rule 50 motion is based on this Motion, Google’s April 25th motion for judgment as a matter of law and the evidence and authorities cited therein, the brief in support and the evidence and authorities cited therein that the Court has directed Google to file in support of this Motion, the entire trial record, and such argument as the Court allows on this Motion.

Rule 50 of the Federal Rules of Civil Procedure applies only to issues on which the jury is being asked to render a verdict. *See* Fed. R. Civ. P. 50(a)(1) (rule applies where “a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue”). Google’s Rule 50 motion therefore does not address copyrightability or its equitable defenses—issues which are reserved for the Court. To the extent that the Court concludes Rule 50 motions can be directed to issues reserved to the Court (or such issues in combination with issues left for the jury), Google further moves for judgment as a matter of law on Count VIII in its entirety on the grounds that (a) the structure, sequence, and organization of the Java APIs is not protectable by copyright, and Oracle has not carried its burden of proof as to the remaining parts of its claim, namely the specifications and allegedly copied items (as referenced in the paragraphs beginning with “*Third*” and “*Fourth*” above); and (b) Count VIII of the Oracle’s Amended Complaint is barred by Google’s equitable defenses of laches, equitable estoppel, waiver, and implied license. Such further motion is based on this Motion, the proposed findings of fact and conclusions of law and the evidence and authorities cited therein that the Court has directed Google to file on issues reserved for the Court, the entire trial record, and such argument as the Court allows on this Motion.

Dated: April 29, 2012

KEKER & VAN NEST LLP

By: /s/ Robert A. Van Nest  
ROBERT A. VAN NEST

Attorneys for Defendant  
GOOGLE INC.